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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 198/93/WZ/2018-RA / 2164 Date of issue: 18.04.2023

ORDER NO. 232/2023-CX (WZ)/ASRA/MUMBAI DATED 12.4.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of CGST & CX, Surat

Respondent : M/s. Welspun India Limited

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against Order-in-Appeal No.
CCESA-SRT(Appeals)/PS-365/17-18 dated 20.12.2017
passed by Commissioner (Appeals), CGST & Central Excise,
Surat.

ORDER

This Revision Application is filed by the Commissioner of CGST & CX, Surat (hereinafter referred to as the Applicant-Department) against Order-in-Appeal No. CCESA-SRT(Appeals)/PS-365/17-18 dated 20.12.2017 passed by Commissioner (Appeals), CGST & Central Excise, Surat.

2. Brief facts of the case are that M/s. Welspun India Limited, (hereinafter referred to as the Respondent), a manufacturer-exporter, had filed a rebate claim for duty paid on export of goods amounting to Rs.2,07,240/- under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. The rebate sanctioning authority rejected the rebate claim, vide Order-in-Original (OIO) No. VAPI-I/REBATE/162/15-16 dated 30.09.2015, on the ground that the claim was filed without the original and duplicate copy of ARE-1. Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the Applicant-Department has filed the impugned Revision Application mainly on the grounds that:

- i The Commissioner (Appeal) has erred in not considering the fact that granting rebate is not obligatory on part of the Government but it shall be subject to such conditions, limitations specified by the Government by way of Rules, Notifications and instructions etc. Para 8.3 of Chapter 8 of CBEC Manual of Supplementary Instructions prescribed the documents to be filed with the rebate claim as per which the claimant of rebate shall submit the original copies of ARE-1 or ARE-2, as the case may be.
- ii The condition in Para 3 (b) (ii) of the Notification No. 19/2004-CE (NT) dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002 has not been followed. Thus, in the absence of such statutory documents, duty paid nature of the goods cannot be ascertained nor established and therefore, the fundamental criteria as envisaged in

- para 8.4 part I Chapter 8 of C.B.E. & C.'s Excise Manual of Supplementary Instructions for ascertaining the duty-paid character/nature/identification of the goods exported, are not fulfilled in the instant case.
- iii That the Commissioner (Appeals) has erred in not taking in consideration the loss of revenue by grant of rebate on the basis of xerox/photocopies of documents in place of the originals. If the claimant is granted rebate claim on the basis of xerox/photo copies of the required documents, it would open up possibility of the claimant filing claim,
- on the basis of manipulated fraudulent documents which is difficult to identify in a xerox/ photo copy and
 - both with the Jurisdictional Commissionerate as well as with the Maritime Commissionerate. Further, no provisions has been provided for claim of rebate in case of loss of documents when the goods are exported under claim of rebate, and in the absence of such a procedure, the Commissioner (Appeals) erred in holding the condition of submission of original/ duplicate copy of ARE-I, in original as procedural.
- iv The Revisionary Authority, Government of India is consistently holding that the submission of original/ duplicate copies of ARE-1/ 2 is fundamental requirement and not procedural. Reliance is placed on Order No. 93/2013 dated 31.01.2013 in the case of M/s Enkay Containers reported in 2013 (295) ELT 165 (G.O.I).
- v The Commissioner (Appeals) has mis-construed the above order in holding that the above order is not applicable in the present case. The Commissioner (Appeals) has erred in not appreciating the fact that the Revisionary Authority in the above order has clearly held that submission of original document is statutory requirement. Further, as has been held by the Supreme Court of India in the case of J. Yashoda v. Shobha Rani [2007 (212) E.L.T. 458 (S.C.)] photo copies cannot be received as secondary evidence in terms of Section 63 of the

Act and they ought not to have been received since the documents in question were admittedly photocopies, there was no possibility of the documents being compared with the originals.

- vi The Hon'ble High Court of Allahabad has in the case of M/s Vee Excel Drug and Pharmaceuticals Pvt. Ltd. Vs. UOI [2014 (305) E.L.T. 100 (All.) has held:

"23. From a bare reading of Rule 18 of Rules, 2002 it is evident that in order to entitle a person to claim rebate, it is open to Government of India by notification to provide a procedure for claiming rebate benefit. It is in purported exercise of power there under that the Notification dated 6-9-2004 has been issued which specifically contemplates filing of ARE-1, verification of goods sought to be exported and sealing of goods after such verification by authorities on the spot, i.e., factory premise, etc. In case the procedure of filing ARE-1 is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. The objective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction.

24..... It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law. The principle was recognized in Nazir Ahmad v. King Emperor - AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would like to refer a few recent one. "

25. In Dhananjaya Reddy v. State of Karnataka - 2001 (4) SCC 9 in para 23 of the judgment the Court held : "It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. "

- vii In view of the above settled position of law, the Commissioner (Appeals) has erred in holding that the assessee cannot be deprived of the benefit when the substantial condition has been fulfilled. Filing of ARE-1 in original is a mandatory requirement for granting the rebate of duty on excisable goods used in exported goods.

In the light of the above submissions, the applicant-department prayed to set aside the impugned Order-in-Appeal and uphold the impugned OIO.

4. Personal hearing in the case was fixed for 10.01.2023. Shri Shiv Charan Meena, Assistant Commissioner attended the online hearing on behalf of the applicant-department and submitted that original & duplicate ARE-1 are necessary as per manual for sanction of rebate.

Shri S. Suriyanarayanan, Advocate, representing the respondent, attended the online hearing and submitted that invoice, B/L and Mate receipt endorsed by Customs establish export of duty paid goods. He further submitted that procedural in gradations should not be used to deny them substantial benefit when export of duty paid goods is not in doubt. He requested to maintain the Order of Commissioner (Appeals). He also submitted written submissions enclosing the relevant export documents.

5. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned Order-in-Original, Order-in-Appeal, and Revision Application filed by the Applicant-Department.

6. Government notes that the issue to be decided in this case is whether due to non-submission of original and duplicate copy of ARE-1, a rebate claim filed under Rule 18 of the Central Excise Rules, 2002 can be rejected?

7. From the perusal of records, Government observes that the rebate sanctioning authority had rejected the rebate claims as the respondent could not produce the original & duplicate copies of the ARE-1 as required under Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004. However, as evident from para 13 of the impugned OIA, all other documents pertaining to the relevant export had been submitted by the respondent. The said para 13 is reproduced hereunder:

12. The shipping Bill No. 9265686 dated 28-04-2015 mentions invoice No. as 2015410519 dated 27-04-2015. The same invoice No. is seen in the Xerox copy of ARE-1. Subsequently, the mate receipt No. 830474 dated 06-05-2015 mentions/acknowledges shipping Bill No. as 9265686. subsequently, the bill of Lading No. MSCUE129771 does mention the reference to the Shipping Bill No. 9265686 dated 28-04-

2015. Thus, I find that though the appellant was not able to produce the original copy of ARE-I as required, it has been established the goods were exported out of the country vide the said ARE-I/ Shipping Bill/ Mate Receipt/ Bill of Lading. Thus, the chain of Invoice-ARE1-Shipping Bill- Mate Receipt-Bill of Lading was established and the co-relation between them was also established which leaves no scope of doubt that the goods were actually exported out of country.

8.1 Government observes that Hon'ble Bombay High Court in the case of M/s. Zandu Chemicals Limited [2015 (315) E.L.T. 520 (Bom.)], held that: *the condition of submission of original as well as duplicate copies of ARE1 was only directory/procedural, and not mandatory and that Rebate claim could not be rejected for their non-submission, as there was proof of export of goods in other documents like shipping bill on which ARE1 was mentioned.*

8.2 Government further observes that Hon'ble Gujarat High Court in the case of M/s. Raj Petro Specialties [2017 (345) E.L.T. 496 (Guj.)] held that: *as per requirement of law, submission/production of original and duplicate copies of ARE1 along with rebate claim, is not the only requirement. Since exporter producing other documents supporting and establishing export of excisable goods on payment of duty from factory/warehouses and all other conditions and limitations mentioned in Clause 2 of Notification issued under Rule 18 of Central Excise Rules, 2002 satisfied, exporter to be entitled to rebate of duty. Assessee's entitlement to rebate under Rule 18 ibid on fulfillment of conditions and limitations mentioned in Clause 2, is undisputed. Submission of documents along with rebate claim falls under head "procedure" therefore, production of original and duplicate copies of ARE1 along with rebate claim, merely, procedural one. Production of impugned documents as per procedure required to be held directory and not mandatory. Merely on the ground of non-submission of said documents, rebate claim ought not to be rejected.*

9.1 Government observes that these judgments overruled the Orders passed by this authority wherein it had been held that non-submission of

original & duplicate copy of ARE-1 could not be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. Similar view had also been taken in the matter of M/s. Enkay Containers which has been relied upon by the Applicant-Department.

9.2 As regards the case law of M/s. Vee Excel Drug and Pharmaceuticals Pvt. Ltd. relied upon by the Applicant-Department, Government observes that in said case law no ARE-1 had been prepared by the manufacturer and therefore it had been held by the Hon'ble Allahabad High Court that - *'In case the procedure of filing ARE-1 is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. The objective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction.'* However, in the instant case the specified procedure was properly followed by the respondent and consequently verification regarding genuineness of export transaction could be successfully done by the Appellate authority as detailed at aforementioned para 7.

Therefore, Government finds both the case laws relied upon by the Applicant-Department as non-applicable in the instant matter.

10. In view of the above findings, the Government finds no reason to annul or modify the Order-in-Appeal No. CCESA-SRT(Appeals)/PS-365/17-18 dated 20.12.2017 passed by Commissioner (Appeals), CGST & Central Excise, Surat and rejects the impugned Revision Application.

Shrawan
12/4/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.

232/2023-CX (WZ)/ASRA/Mumbai dated 12.4.23

To,

M/s. Welspun India Limited,
Survey No.76, 74,87,88,110 & 260,
Village-Morai, Vapi – 396 191.

Copy to:

1. Commissioner of CGST & CX,
Surat Commissionerate,
Central Excise Building,
Chowk Bazar, Surat – 395 003.

2. Adv. S. Suriyanarayanan,
U-16,Swagat Complex,
Opp. Sneh Milan Garden,
Kadampalli, Nanpura,
Surat – 395 001.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.